

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Docket#
: 10-cr-594 (ERK) (JMA)
:
- versus - :
: U.S. Courthouse
JOSEPH YANNAI, : Brooklyn, New York
Defendant : December 21, 2010
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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
ON BAIL HEARING
BEFORE THE HONORABLE JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 THE CLERK: Criminal Cause for Status
2 Conference as to Bail Application, docket number
3 10-cr-594, United States of America v. Joseph Yannai.

4 Counselors, please state your appearances for
5 the record.

6 MR. SPECTOR: Good morning, your Honor. Daniel
7 Spector for the government.

8 MR. SCHNEIDER: Federal Defenders by Michael
9 Schneider for Mr. Yannai.

10 Good morning.

11 MS. VON DORNUM: Good morning, your Honor.
12 Diedre Von Dornum from Federal Defenders and Mr. Yannai
13 is present in the courtroom.

14 THE COURT: Good morning.

15 I received a submission from the government.
16 Did you want to be heard?

17 MR. SCHNEIDER: I will, your Honor. I have --
18 I recently received another appraisal which was the
19 appraisal performed by the bank for -- prior to this
20 latest loan modification. So the loan is in arrears.

21 THE COURT: What loan modification?

22 MR. SCHNEIDER: I'm sorry. The refinancing --
23 the present loan's refinancing. There was an appraisal
24 done by the bank in 2007 and I'll provide that to the
25 Court with a cover letter later today. I do that -- I

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1 understand that valuations have changed since 2007
2 greatly but it was done by the same appraiser who did the
3 appraisal that we provided on the last date. And that
4 appraiser in 2007 had been hired by the bank. So I am
5 going to provide it because I think it indicates that he
6 is an independent appraiser.

7 Since our last date, Ms. Fusillo has spoken
8 with the lender about the loan modification and they did
9 indicate to her over the phone that the modification was
10 made in error or going to be withdrawn because they
11 didn't think her income was high enough to meet the
12 payments of the new modified loan. That, however, was
13 only orally given to her on the phone. We don't have any
14 written verification of that. I understand the
15 government has provided these two letters or one letter
16 from December 13.

17 It's not clear to me that that's a withdrawal
18 of the modification offer. I don't know -- this bank
19 doesn't seem to know exactly what it's doing but so the
20 record is clear, it's our understanding based on this
21 oral representation over the phone made to Ms. Fusillo
22 that the modification that she was offered on December 3
23 probably is not being offered any more but they haven't
24 sent her a letter to that effect. And she did send in
25 her payment and the signed modification agreement. When

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1 we do get written confirmation of that, we'll make it
2 available to the Court and the prosecutor.

3 The other thing is I have to, I guess, mention
4 and put on the record my concern which is this, that Ms.
5 Fusillo received, I think, the loan modification. It was
6 dated December 3. She received it sometime later, maybe
7 a week later. I provided it to the government prior to
8 our hearing last week and I spoke to Mr. Spector after
9 that who had spoken to the bank or told me he had spoken
10 to the bank and the modification wasn't going to be
11 signed by the bank.

12 That timing concerns me. I don't know what
13 happened. Perhaps the bank made a mistake and recognized
14 it. But I have a concern if somebody on the government's
15 part interceded with the bank in regards to the
16 modification, as opposed to just asking them about it.
17 Asking them about it, obviously I think is appropriate
18 but any steps taken by anybody on the government's side
19 to interfere with that I think would raise ethical
20 issues.

21 So I have a concern about that timing since we
22 thought the modification or Ms. Fusillo thought the
23 modification was a done deal and after I provided it to
24 the government, apparently it wasn't.

25 MR. SPECTOR: Judge, I can address that

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1 directly. Just so the record is clear, after
2 Mr. Schneider notified me that his client would be
3 receiving a modification, I contacted the attorney for
4 the bank, inquired as to what the status was. She
5 expressed to me surprise that the modification had been
6 granted, said that she would be inquiring with her
7 client, the bank, that was not -- we did not request at
8 any time that they take any action one way or the other.
9 She on her own made the inquiry and then contacted the
10 government and informed the government that as a result
11 of the inquiry, the bank had determined that they had
12 made an error.

13 THE COURT: Okay. But I mean -- go ahead. Did
14 you have anything else?

15 MR. SPECTOR: No, I don't have anything else,
16 your Honor.

17 THE COURT: I mean isn't this -- can't we put
18 this all aside? She doesn't have the equity anyway.

19 MR. SCHNEIDER: What do you mean?

20 THE COURT: The bank did an appraisal and what
21 do you say here, what's the date, July 2010?

22 MR. SPECTOR: Correct, your Honor.

23 THE COURT: And that appraisal is what, 750?

24 MR. SPECTOR: Correct, your Honor.

25 MR. SCHNEIDER: Well, Judge, we can -- I think

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1 that 750 is a low appraisal. I find the --

2 THE COURT: It doesn't matter what you think.

3 MR. SCHNEIDER: We provided an appraisal of
4 well over \$900,000. The house was valued by the bank in
5 2007 at \$1.1 million. And we'll provide that to the
6 Court.

7 THE COURT: 2007 is --

8 MR. SCHNEIDER: I understand. I understand
9 that things have changed but a twenty percent drop, I
10 think is a reasonable expectation even after the mortgage
11 meltdown.

12 First of all, it's not clear to me what equity
13 Judge Korman will think is necessary to secure
14 Mr. Yannai's release. I understand the concern about the
15 foreclosure and I understand that it's unlikely that a
16 house where the loan is not current will be viewed as
17 adequate security. I understand that. But if the loan
18 was modified, if the loan was reinstated, I think we're
19 in a different situation.

20 THE COURT: But it hasn't been.

21 MR. SCHNEIDER: No, that's correct. I
22 understand that. I understand.

23 THE COURT: We just keep coming back and --

24 MR. SCHNEIDER: Well, I --

25 THE COURT: -- according to you, we're in a

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1 holding pattern.

2 MR. SCHNEIDER: Right. It's not --

3 THE COURT: According to the government, the
4 bank's made a decision. Do you want to be --

5 MR. SPECTOR: No, I think the letter from the
6 bank is quite clear, frankly, the December 13 letter in
7 the -- I guess the fourth full paragraph on the first
8 page. "The request for modification was reviewed but we
9 have determined that there are no loan modification
10 options available for you at this time." I think that's
11 clear as can be that there's not a modification
12 available. There's not going to be a modification,
13 unless circumstances change.

14 MR. SCHNEIDER: Right. And I understand the
15 government's position. I mean our position is it's not
16 -- you know, you get loan modification paperwork in the
17 mail and you fill it out and you send it back, you would
18 expect if they're not going to sign it, they would send
19 you a letter saying we got this and we're not signing it.

20 So it's not clear to me, you know, that this
21 isn't two different people in the bank who don't know
22 what's going on. I guess I do fully assume she's going
23 to get that letter.

24 THE COURT: All right.

25 MR. SCHNEIDER: I mean that's what they told

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1 her over the phone.

2 THE COURT: Okay.

3 MR. SCHNEIDER: And I understand -- if I can
4 understand the Court's position, is that if the house is
5 -- the loan isn't current, it can't be posed as security.
6 You can't make a finding as to the amount of equity in
7 the house or the finding we'd make is that there's no
8 equity in the house. And I understand that.

9 So perhaps we can leave it at that but when the
10 loan is current, whether it's reinstated or modified,
11 then circumstances have changed and I think that at that
12 point without further hearing, this court could issue a
13 ruling as to the amount of equity in the house at that
14 point.

15 THE COURT: Well, yes, but in which case are
16 you just -- are you withdrawing your application to post
17 the house now and then you want to make another
18 application at another time when the circumstances
19 change?

20 MR. SCHNEIDER: Well, no, we're not withdrawing
21 our application to post the house.

22 THE COURT: Are you asking me not to do an R&R
23 to Judge Korman on it now? Are you asking me to wait?
24 What are you asking for?

25 MR. SCHNEIDER: Just one moment, your Honor.

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1 THE COURT: Yes, okay.

2 (Counsel and client confer)

3 MR. SCHNEIDER: No, I think we're asking for
4 the report and recommendation after we provide this
5 latest -- not the latest appraisal but the appraisal from
6 2007. We'd ask the Court to make a report and
7 recommendation of what in its opinion the equity of the
8 house would be.

9 THE COURT: Without addressing the --

10 MR. SCHNEIDER: If the house is --

11 THE COURT: -- the status of the loan?

12 MR. SCHNEIDER: No, you can address the status
13 of the loan, if the house is foreclosed; right?

14 THE COURT: All right. Fine.

15 MR. SPECTOR: I think the Judge had also --
16 Judge Korman had also asked to have a ruling on the
17 defendant's wife's claim about the reason for the
18 modification, For the reasons set forth in our letter of
19 yesterday --

20 THE COURT: Yes.

21 MR. SPECTOR: -- as well as today, we think she
22 should be found uncredible (sic).

23 THE COURT: Well, you know, I have the
24 transcript from when you were before Judge Korman and
25 unless things have changed from that date, I'll follow

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1 the instructions as to what he wants from me and I'll
2 issue an opinion.

3 Thank you.

4 MR. SPECTOR: Thank you, Judge.

5 MR. SCHNEIDER: Thank you.

6 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 14th day of January, 2011.


Rosalie Lombardi
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